29.04.2025
Court No.13
Item No.2
Pk/ap

FMAT566 of 2023
With
CAN 1 of 2023
And
CAN 2 of 2023
And
CAN 3 of 2024

Messers Bharat Petroleum Corporation Ltd.
Vs.
Shri Laddu Gopal Bajoria and others

Mr. Sanjib Mal,
Mr. Bimalendu Das,
Ms. Shomrita Das
... for the appellant.

Mr. Arindam Banerjee, Sr. Adv.
Mr. Ashis Kumar Mukherjee,
Mrs. Sulagna Mukherjee,
Mr. Saurabh Prasad,
Mr. Ishaan Saha
... for the respondents.

1. CAN 1 of 2023 is an application filed under Section 5 of the Limitation Act seeking Condonation of 1412 days in filing FMAT 566 of 2023.

2. The appeal itself is directed against judgment and order dated 17.12.2019 passed by the Civil Judge (Junior Division) 4th Court at Alipore in an application under Order 20 Rule 12 filed by the respondents. The application was filed after the respondents succeeded in a suit for eviction of the appellant in Title Appeal No.119 of 2002 passed by the Learned District Judge at Alipore.

3. From the averments in the application it appears that the appellant applied for certified copy of the order dated 17.12.2019 on 19.12.2019. The certified copy was ready for collection from the Registry of District Court on 03.02.2020. The limitation of appeal being thirty days before the District Judge, the appellant ideally ought to have filed Title Appeal No. 42 of 2020 on or before 04.03.2020.

4. Title Appeal No. 42 of 2020 was actually filed on 30th June, 2020. There was, therefore, a delay of about 118 days in filing T. A. No. 42 of 2020 itself.

5. T. A. No. 42 of 2020 was listed before the District Judge on 11 dates between 21st September, 2020 and 12th December, 2023 for payment of deficit court fees. The appellant was represented before the District Judge on all dates. On four dates i.e. 07.04.2022, 30.07.2022, 24.11.2022 and 20.03.2022 a notice showing cause as to why the appeal should not be dismissed for non-payment of deficit court fees was also heard and allowed by the District Judge.

6. The respondent/landlord in the meantime filed an appeal being F.A.T. No. 52 of 2023 against the order dated 17th December' 2019 in February, 2023.

7. The appellant herein was served notice of the said appeal. The appeal was finally dismissed on 4th September, 2023 by a Division Bench of this Court. It is only thereafter

on 8th September, 2023 that the appellant withdrew Title Appeal No. 42 of 2020 and filed the instant appeal on 15th December' 2023.

8. In the backdrop of the aforesaid facts, the appellant seeks condonation of delay of about 1412 days from 3rd March, 2020 till 15th December, 2023 in filing this instant appeal.

9. In the application for such condonation, a threefold plea is raised. Firstly, the appellant was bona fide, and diligently pursuing the mistaken proceedings in Title Appeal No. 42 of 2020 before the District Judge at Alipore which did not have pecuniary jurisdiction to entertain the appeal. It is therefore argued that in terms of Section 14 of the Limitation Act the said period should be excluded from the delay. Secondly, the Hon'ble Supreme Court of India has excluded the period between 15th March, 2020 and 20th February, 2022 from being reckoned for limitation, in view of COVID-19 Pandemic. Thirdly, the appeal raises a substantial question of law. The question being that the issue as regards mesne profits could not have been heard by the learned Civil Judge (Junior Division) 4th Court at Alipore since coming into force of the Commercial Court's Act of 2015 with retrospective effect from 23rd October, 2015.

10. In support of his arguments, learned Counsel for the appellant/M/s. Bharat Petroleum Corporation Limited (in short 'BPCL') would submit that his client is under the

control of the Central Government and other Authorities within the meaning of Article 12 of the Constitution of India. There were bureaucratic delays in taking the decision to first file the appeal being Title Appeal No. 42 of 2020 before the learned District Judge, Alipore and thereafter to withdraw the same and file the appeal before this Court in December, 2023.

11. Learned Counsel for the appellant places relevant decision of the Hon'ble Supreme Court of India in the case of ***Inder Singh v. The State of Madhya Pradesh*** reported in ***2025 INSC 382*** particularly paragraphs 14 to 21 thereof. He submits that notwithstanding several decisions rendered in the same year to the contrary, the Hon'ble Supreme Court of India has dismissed the appeal and upheld the order of the High Court on condoning the delay of about 1537 days by the State of MP in filing a review application.

12. In the said decision, the Court held that the application of the State was impersonal in nature and appliedthe decision of the Hon'ble Supreme Court of India from 1974, particularly in the case of ***Ramchandra Shankar Deodhar v. State of Maharashtra*** reported in ***(1974) 1 SCC 317*** in taking a liberal approach to condone delay. The Hon'ble Supreme Court of India applying the decision in ***State of Manipur v. Kotin Lamkang*** reported in ***(2019) 10 SCC 408*** and in the case of ***A. B. Govardhan v. P. Ragothaman*** reported in ***(2024) 10 SCC 613*** which

held that one of the tests must be whether the applicant was so negligent, as to infer that it has given up its claim.

13. What is relevant to this Court to note is the said case of ***Inder Singh (supra)*** as also other cases referred to by the parties where on one side was the State and on the other side was an individual. The cases concerned the provisions of the Land Acquisition Act.

14. The next decision relied upon by the Counsel for the appellant is the case of ***N. Balakrishnan v. M. Krishnamurthy*** reported in ***(1998) 7 SCC 123*** particularly paragraphs 10 and 13 thereof. In the facts of the said case the issue was the condonation of 883 days of delay in filing an appeal against an order rejecting an application for setting aside an ex parte decree. The delay was condoned on finding that the delay was caused by inaction of the appellant's advocates. The said decision was rendered in the peculiar facts of the case.

15. The third case relied upon by the Counsel for the appellant was the case of ***M. P. Steel Corporation v. Commissioner of Central Excise*** reported in ***(2015) 7 SCC 58*** particularly paragraphs 8 and 9 thereof on the scope of Section 14 of the Limitation Act. The observation is that Section 14 can be invoked even without specific pleadings if the facts of the application call for its application. The decision is an authority for the proposition that Section 14 can be applied to proceedings before Tribunals and quasi judicial bodies.

16. Learned Counsel for the appellant lastly relied upon a celebrated decision in the case of ***Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.*** reported in ***(1987) 2 SCR 387***.

17. Per contra, learned Counsel for the respondents has submitted that the delay in the instant case from 3rd March, 2020 until 15th December, 2023 exceeding three years i.e. 1412 days has not been explained by the appellant. Since sufficient cause has not been shown by the appellant, the delay cannot be condoned under Section 5 of the Limitation Act. It is also argued that the appellant cannot seek the benefit of Covid period exclusion orders, since the limitation expired on 4th March 2020, eleven days before the Covid exclusion period ordered by the Supreme Court.

18. It is argued that the vital ingredient for invoking of Section 14 of the Limitation Act is the bonafide pursuit of mistaken proceedings before a Court without jurisdiction with due diligence and in good faith. He submits that the appellant has neither demonstrated bonafides nor due diligence much less good faith in pursuing Title Appeal No. 42 of 2020 before the learned District Judge at Alipore.

19. Learned Counsel appearing on behalf of the respondents has relied upon a decision of the Hon'ble Supreme Court of India in the case of ***State of Madhya Pradesh v. Ramkumar Choudhary*** reported in ***2024 SCC OnLine SC 3612*** and in the case of ***State of Madhya***

Pradesh & Ors. v. Bherulal reported in ***(2020) 10 SCC 654***. In Section 14, the learned Counsel for the respondents has placed a decision in the case of ***Ghasi Ram v. Chait Ram Saini*** reported in ***(1998) 6 SCC 200*** particularly paragraph 10 thereof.

20. Having heard the learned Counsel appearing on behalf of the respective parties at length, this Court notes that the appellant was not bonafide proceeding with Title Appeal No. 42 of 2020 before the learned District Judge at Alipore. Firstly, the proceeding itself was filed with an unexplained delay from 4th March, 2020 till 15th March, 2020, when COVID-19 Pandemic period of exclusion commenced further until 30th June 2020 when the application was actually filed.

21. It is doubtful whether the appellant can at all avail the exclusion period granted by the Hon'ble Supreme Court of India referred to hereinabove since the pandemic has not prevented him from filing Title Appeal No. 42 of 2020 on 30th June, 2020 before the learned District Judge at Alipore.

22. Be that as it may, the leverage and benefit available to a Government Department may not be available to BPCL, which is a body corporate albeit under the control and management of the Central Government.

23. BPCL as an autonomous corporate business entity primarily engages in private commercial transactions, inter

alia, in the nature of leasing premises, for the purpose of housing its offices or its petroleum product outlets. BPCL cannot be equated with a regular Government Department.

24. What is more interesting is the conduct of the proceedings in Title Appeal No. 42 of 2020 before the learned District Judge at Alipore by the appellant. Notwithstanding COVID, BPCL was represented before the learned District Judge at Alipore on 11 dates over 3 years as already indicated hereinabove.

25. The appellant has filed an appeal before the learned District Judge at Alipore but has, for unexplained reasons, not paid court fees thereat. Adjournment for payment of deficit court fees was obtained on eleven occasions. The learned District Judge at Alipore finally issued a Rule on the appellant as to why Title Appeal No. 42 of 2020 should not be dismissed. The said petition was itself heard on 24th November, 2022 and 20th March, 2023, despite getting a second opportunity, the appellant chose not to pay the court fees and sought adjournment before the learned District Judge at Alipore causing appearance therefor on 19th June, 2023, 8th September, 2023 and 12th December, 2023. Had the appellant paid the Court fees, the respondent would have been notified and would have pointed out the jurisdiction of the Court. TA 42 of 2020 therefore does not qualify as a bona fide judicial proceeding in the first instance. It was not being pursued diligently or

in good faith. Section 14 of the Act of 1963 cannot therefore be invoked by the Appellant.

26. The conduct of the appellant is also found reprehensible on another score. The respondent/landlord has filed F.A.T. No. 52 of 2023 sometime in February, 2023. Notice was duly served on the appellant and pleadings were filed therein. The appellant must, immediately upon receipt of the notice of F.A.T. No. 52 of 2023,be deemed to have been notified or become aware of the absence of pecuniary jurisdiction of the learned District Judge at Alipore to hear Title Appeal No. 42 of 2020. The appellant waited until 4th September, 2023 when F.A.T. No. 52 of 2023 filed by the respondent/landlord seeking interest on mesne profits, was dismissed by this Court.

27. It is in this context that this Court is inclined to refer to paragraph 5 of the decision in the case of ***Ramkumar Choudhary (supra)***. Paragraph 5 of the said decision is set out hereunder.

> "5. The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In Majji Sannemma v. Reddy Sridevi4, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in Ajay Dabra v. Pyare Ram5 wherein, it was held as follows:
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> > "13. This Court in the case of Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:
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> > "15. The law on the issue can be summarised to the effect that where a case has been presented in the

> court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."
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> 14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant."

> Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party."

28. It is clear and explicit from the above that the absence of negligence, inaction or bona fides must be a precondition for finding sufficient cause for condonation of delay under Section 5 of the Limitation Act. The Hon'ble Supreme Court of India further found that the attitude of the Government bodies in feeling that the law of limitation does not apply to them has been deprecated. It was further found that in the event the legislature felt that a separate period of limitation should apply to the Government and Autonomous bodies thereunder, appropriate legislation should be enacted. It is in this light that the Hon'ble Supreme Court of India has held that the State and its instrumentalities and other Authorities and Autonomous

bodies under its control cannot be treated differently from private citizens insofar as the application of Sections 5 and 14 of the Limitation Act and other provisions of law of the Limitation Act are concerned.

29. In the case of ***Bherulal (supra),*** the observations of the Hon'ble Supreme Court of India in paragraphs 3, 4 and 5 cannot be ignored. For the sake of convenience, paragraphs 3, 4 and 5 thereof are set out hereunder.

> "3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji [LAO v. Katiji, (1987) 2 SCC 107]]. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] wherein the Court observed as under : (Postmaster General case [Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649] , SCC pp. 573-74, paras 27-30)
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> > "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
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> > 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being

> used and available. The law of limitation undoubtedly binds everybody including the Government.
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> 29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.
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> 30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

> Eight years hence the judgment is still unheeded!
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> 4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In para 4, a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.
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> 5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.”

30. Applying the aforesaid dicta to the facts at hand, it is found that the appellant has been casual, lax and negligent in filing TA 42 of 2020 and pursuing the same. The appellant has also been dishonest in suppressing TA 42 of 2020 from the respondents. The argument that if there is a mention in the appeal, then even negligent and inordinate delay can be condoned, has been rejected with disdain by the Supreme Court in ***Bherulal (supra).*** Some of the

decisions cited by the appellants have been considered in the aforesaid decision.

31. Insofar as the provisions of Section 14 of the Limitation Act as already stated hereinabove, due diligence, bona fide pursuit and good faith are preconditions for invoking Section 14. The observations of paragraph 10 of the decision in the case of ***Ghasi Ram (supra)*** cannot be equally ignored. For the sake of convenience, paragraph 10 is set out hereunder.

> **"10.** Learned counsel appearing for the respondents urged that, assuming the High Court suffered from disability to decide the rights of party on facts, the plaintiff-appellant did not prosecute the revision petition before the High Court in good faith; therefore, the appellant cannot derive any benefit of Section 14 of the Act. Before the High Court, it was not disputed that the plaintiff-appellant has prosecuted the other civil proceeding with due diligence. What is disputed is that the plaintiff did not prosecute the civil proceeding in good faith. "Good faith" is defined in the Act as under:
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> "2. (*h*) 'good faith' — nothing shall be deemed to be done in good faith which is not done with due care and attention;"
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> The aforesaid definition shows that an act done with due care and attention satisfies the test of "good faith". "Due care" means that sufficient care was taken so far as circumstances demanded and there was absence of negligence. In other words, the plaintiff has taken sufficient care which a reasonable man is expected to take in order to avoid any injury. It is not shown here that the plaintiff-appellant has not taken sufficient care in prosecuting the remedy. Where a plaintiff is illiterate and is not acquainted with the procedural law, the only thing that he can do is to consult some lawyer for advice. It is not disputed that the plaintiff-appellant filed the revision before the High Court on the advice of his counsel, although it may be that he was ill-advised. Learned counsel for the respondents contended that any act done in violation of law cannot be described as act done with due care. No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil proceeding in good faith. It is based on sound principle of law. But the said rule cannot be enforced in rigidity in every case. Each case has to be judged on its own merits. In the present case, the plaintiff-appellant is not a legally-trained person and thus he sought advice of

> his counsel for future course of action. The counsel advised him to file revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 CPC. It is also true that at that time, there was no unanimity about remedy of revision amongst the various High Courts. The plaintiff-appellant's revision was entertained for hearing by the High Court and that gave expectation to the plaintiff-appellant that the order of the executing court may be set aside and further, there was no inordinate delay in filing the suit under Rule 103. If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff-appellant should not be accorded the benefits of Section 14 of the Act. Does the interest of justice demand that the plaintiff should be refused the benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill-advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel. On the facts and circumstances of this case, we are satisfied that the plaintiff-appellant prosecuted the earlier civil proceeding in good faith."

32. Applying the aforesaid dicta to the conduct of the appellant in Title Appeal No. 42 of 2020, it would be clear and explicit that the appellant was toying with the respondents by filing Title Appeal No. 42 of 2020 before the learned District Judge at Alipore and prolonging the same for three years. The respondents were not even notified of the said proceedings. The appellant, as already indicated hereinabove, should have come to know even as late as February-March, 2023, upon notice of F.A.T. No. 52 of 2023, that Title Appeal No. 42 of 2020 was not maintainable before the learned District Judge, Alipore.

33. The appellant would have demonstrated bonafides if it had paid the Court fees in aid of Title Appeal No. 42 of 2020 and notified the respondents. Then either of the parties or the District Judge, Alipore himself would have noticed the absence of pecuniary jurisdiction in the entertainment of the said appeal.

34. The conduct of the appellant in continuously appearing in pursuing T.A. 42 of 2020 without paying any court fees and finally withdrawing the same, would not bring it under the category of a bonafide mistaken judicial proceedings. The appellant therefore cannot rely upon T.A. 42 of 2020 to avail the benefit of Section 14 of the Limitation Act, 1963.

35. For the reasons stated hereinabove, the application for condonation of delay being CAN 1 of 2023 is dismissed.

36. Consequently, all other CAN applications shall stand dismissed.

37. F.M.A.T. No. 566 of 2023 shall also stand dismissed.

38. There will be no order as to costs.

39. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)